IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/07/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRL.O.P.No. 23917 of 2003 and CRL OP. 23918 of 2003

Kamala Anbarasu ..... Petitioner in both the petitions.

-Vs-

The State
rep. by the Inspector of Police
V-2 Virugambakkam Police Station
Chennai. ..... Respondent in both the petitions.

Petitions filed under Section 482 of Cr.P.C praying for as stated below.

For Petitioner : Mr.K.S.Dinakaran

For Respondent : Mr.A.N.Thambidurai
Government Advocate
(Criminal Side)

:ORDER
The Criminal Original Petition No. 23917 of 2003 has been filed under Section 482 of the Code of Criminal Procedure praying to give effect to the orders of this Honourable Court in Crl.O.P.No. 17132 of 200 2 and direct fresh investigation in Crime No. 1317/2002 by the respondent.
The Criminal Original Petition No. 23918 of 2003 has been filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash the charge sheet in C.C.No. 3976 of 2002 pending on the file of the IX Metropolitan Magistrate, Saidapet, Chennai-15 .

2. The case of the petitioner is that she lodged a complaint against one Lalitha, who is claiming to be the second wife of her husband Anbarasu, on 24-10-2001, since the said Lalitha threatened the petitioner and her sons with dire consequences and also tried to hit the petitioner with a stick besides abusing them in filthy language; that on the same day, the said Lalitha also preferred a complaint against the petitioner and her two sons thereby alleging that the petitioner and her two sons attempted to murder her and her children, but because they locked their house door from inside, the petitioner and her sons could not perpetrate the offence but they have broken all the articles in the house; that the respondent police, without even registering the complaint of the petitioner, have proceeded to register the

complaint of the said Lalitha alone and have now completed the investigation also and filed the chargesheet in C.C.No. 3976 of 2002 before the Court of IX Metropolitan Magistrate, Saidapet, Chennai as against the petitioner and her two sons for the alleged offences punishable under Sections 448, 427 and 506 (ii) I.P.C.

3. The petitioner would further submit that having aggrieved against the inaction of the police, the petitioner moved this Court for a direction for investigation of her complaint dated 24-10-2001 in Crl. O.P.No. 17132 of 2002; that this Court by an order dated 14-02-2003 closed the petition as the prayer in the petition was only to the extent of directing the respondent to register the complaint of the petitioner dated 24-10-2001 and the respondent has also registered the case in compliance of the direction of this Court; that further in the said order it was ordered that " however, since it is the settled law that both the cases in counter have to be tried together so as to find out the real aggressor, this Court further held that all further proceedings in the case registered and charge-sheeted by the respondent police based on the complaint lodged by the said Lalitha as against the petitioner and others in C.C.No. 3976 of 2002 are to be stayed pending a finality of decision taken in the complaint lodged by the petitioner as against the said Lalitha, which is now reported to be registered by the respondent, since both the cases arose during the same course of action as cases in counter, therefore, this Court while disposing of the said Criminal Original Petition No. 17132 of 2002 ordered staying of further proceedings in C.C.No. 3976 of 2002 on the file of the Court of IX Metropolitan Magistrate, Saidapet, Chennai, till such time that a finality of decision is arrived at by the respondent in the complaint of the petitioner dated 24-10-2001, on which later a case came to be registered by the respondent.

4. The petitioner's grievance is that despite the orders of this Court made in Crl.O.P.No.17132 of 2002 the respondent did not investigate the case fairly and properly examining the witnesses and collecting the documents and the attitude of the respondent in processing the other case registered against the petitioner and her sons, so as to file the charge sheet in the same would only show the prejudice and partiality shown by the respondent towards her case and interest and therefore, the petitioner prays for a direction to do fresh investigation in the case in Cr.No. 1317 of 2002, which is the subject matter of the first Criminal Original Petition above and further praying to call for the records and quash the charge sheet in C.C.No. 3976 of 2002 , pending on the file of IX Metropolitan Magistrate, Saidapet, Chennai, as per the second Criminal Original Petition above.

5. When the above matters were taken up for consideration, on a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner, this Court is of the view that since being cases in counter, the investigating Officer should have taken up the investigation in both the cases together and the investigation is to be held side by side so as to find out the truth attached to both the complaints by rival parties, particularly in view of the fact that the parties are one and the same and the causes of action alleged are also either same or similar. But, strangely

enough this Court is able to see that the investigating Officer has taken up the complaint given by the said Lalitha and independently investigated into the same and has decided to lay the chargesheet, resulting in the chargesheet filed in the case pending in C.C.No. 3976 of 2002 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai 15, never bothered about the other complaint lodged and only on the direction issued by this Court, a slipshod and perfunctory investigation seems to have been conducted, without bringing in the true impact of both the cases preferred by rival parties, ultimately ending up referring the same as mistake of fact, which is not the way in which such cases in counter are to be dealt with in law.

6. It is relevant to focus attention on Rule 588-A of the Madras Police Standing Order which stipulates as under:

"In a complaint and counter complaint arising out of a same transaction, the investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

While such being the law, the investigating officer, the respondent herein does not seem to have adopted the method that is to be followed in the investigation of cases in counter and therefore, this Court has to pass an order laying emphasis of such a procedure to be adopted as it has been given under Rule 588-A of the Madras Police Standing Order and in these circumstances, this Court is inclined to quash the charge sheet already filed in C.C.No. 3976 of 2002 on the file of IX Metropolitan Magistrate, Chennai, the same having been laid adopting an irregular procedure unknown to law and further direct the Deputy Commissioner (Law and Order) South, Chennai to entrust both the above cases with an officer of the Special Wing with outstanding ability and integrity to take the investigation in both the cases and file the final report, as expeditiously as possible and hence, the following order:

In result,

(i) both the above Criminal Original Petitions succeeds and the same are allowed;

(ii) the charge sheet filed in C.C.No. 3976 of 2002 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, is quashed;

(iii)the investigations in both the cases registered concerned with both the above Criminal Original Petitions are to be taken up by a different Officer as aforementioned, who shall be appointed by the Deputy Commissioner of Police (Law and Order), South, Chennai, within 10 days immediately after the receipt of this order shall take up the investigation and file the final report in the manner known to law, within three months thereafter;

(iv) the respondent is directed to entrust both the case diaries connected to both the above cases with the Deputy Commissioner of Police (Law and Order) South, Chennai, so as to facilitate him to hand over

the same to a new investigating Officer to be appointed for that purpose;
(v) consequently, Crl.M.P.No. 6758 of 2003 in
Crl.O.P.No.23918 of 2 003 is closed.

Index: Yes
Internet:Yes
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To

1. Inspector of Police
V-2, Virugambakkam Police Station
Chennai.

2. IX Metropolitan Magistrate
Saidapet, Chennai.

2. The Public Prosecutor,
High Court, Madras.